

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 84 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

COMMISSIONER OF WEALTH TAX

Versus

ARVINDKUMAR HASHKUKHLAL (HUF)

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 10/05/99

ORAL JUDGEMENT (per R. Balia, J.)

The assessee had claimed exemption in respect of his share in the assets of the firm of which he was a partner to the extent the same related to the value of the asset exempt u/s 5(1)(iv) of the Wealth-tax Act. The claim of the assessee was not accepted by the Wealth-tax

Officer. However, in appeal, Commissioner of Wealth-tax allowed the claim of the assessee, which order was affirmed by the Tribunal, in appeal, by the revenue. In the aforesaid facts and circumstances, following question of law arising out of Tribunal's order in W.T.A. No. 246/Ahd/81 for the Assessment Year 1978-79 has been referred to this Court by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A'.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to deduction u/s 5(1)(iv) of the W.T. Act, 1957?"

2. This Court, in Commissioner of Wealth-tax v. Maheshkumar R. Patel, 216 ITR 272, has taken the view, on the reading of the provision of sec. 4(1)(b) read with rule 2 of the Wealth-tax Rules, 1957, that for the purpose of determining interest of a person in a partnership, the "net wealth" of the firm has to be assessed as distinct from the "net assets" of the firm so that the assets which are not to be included for the purpose of computing net wealth u/s 5 have to be excluded and the same cannot be made a part of the interest of a person in the partnership firm referable to net wealth. The Court was also of the view that there is no warrant for treating property under the ownership of an individual and under joint ownership, as interest in a partnership firm, for the purpose of computing the net wealth under the Wealth-tax Act, differently. For the aforesaid reason, the Court found Tribunal's decision in allowing the claim of the assessee for exclusion of the value of assets u/s 5(1)(iv) to the extent limit prescribed therein for the purpose of computing the value of assets of interest in the partnership firm justified.

3. Following aforesaid decision, we answer the aforesaid question in affirmative, that is to say, in favour of the assessee and against the revenue.

There shall be no order as to costs.